

AFFIDAVIT IN SUPPORT OF PROBABLE CAUSE

I, Eric H. Mercer, a Special Agent with the Bureau of Alcohol, Tobacco, Firearms, and Explosives, having been duly sworn, state:

INTRODUCTION

1. I am a Special Agent with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) and have worked there since January of 2020. I am currently assigned to the Bridgewater, Massachusetts Field Office. Prior to my employment with the ATF, I was employed as a Trooper with the New Hampshire State Police from 2018 to 2020. During my time there, I received training in conducting motor vehicle and criminal investigations. As a ATF Special Agent I have received training and obtained experience into conducting investigations involving firearm trafficking and possession of firearms by persons including, felons, gang members, parolees, narcotics users and narcotics firearms traffickers. Through my law enforcement training and my participation in controlled purchases of narcotics and firearms, search warrants, I am familiar with the methods that are most commonly used by unlawful firearms traffickers and people dealing in firearms without a Federal Firearms License. Based on my training and experience as an ATF Special Agent, I am familiar with the federal firearms and narcotics laws.

2. This affidavit is submitted in connection with an application for a criminal complaint charging Jose MONTANEZ with being a Felon in Possession of a Firearm and Ammunition, in violation of 18 U.S.C. § 922(g)(1).

3. The statements contained in this affidavit are based on my own investigation and on documents and information provided to me by fellow agents and task force officers of the ATF, Officers and Detectives with the New Bedford Police Department, and/or laboratory certifications and reports. This affidavit is submitted for the limited purpose of establishing probable cause and therefore does not set forth all of the information that I, and other law enforcement personnel, have obtained during the course of this investigation.

PROBABLE CAUSE

4. In July 2020, New Bedford Police Department Narcotics Detective, Stephen Gwozdz, received information from a reliable Confidential Informant (CI) who informed him that the CI observed Jose MONTANEZ in possession of a black semiautomatic pistol, inside of the Capri Motel Room #171, located at 741 State Road in Dartmouth, Massachusetts. The CI informed Detectives that MONTANEZ showed the CI a loaded firearm with real bullets; causing the CI to perceive the firearm to be real and functioning. The CI positively identified MONTANEZ in a booking photo shown to the CI by Detectives. The aforementioned CI is registered with the New Bedford Police Department and has provided information previously to members of the New Bedford Police Department that resulted in state search warrants, the seizure of cocaine, and arrests related to narcotics trafficking.

5. Detectives conducted queries on MONTANEZ which revealed that MONTANEZ did not possess a Massachusetts License to Carry Firearms and that MONTANEZ has an extensive criminal history, including multiple felony charges. Detective Derek Sousa, of the Dartmouth Police Department, obtained registry information from the Capri Motel and observed that MONTANEZ was currently registered and renting Room #171. On July 14, 2020, Detective Gwozdz conducted surveillance of the Capri Motel Room #171 and observed MONTANEZ exiting and returning to the room.

6. On July 15, 2020, Detective Gwozdz, along with other Detectives from the New Bedford Police Narcotics Unit, initiated surveillance at MONTANEZ's room at the Capri Motel in preparation for executing a state search warrant of Motel Room #171 and all persons present. Detectives observed MONTANEZ exiting the Capri Motel Room and subsequently get into another individuals vehicle. Detectives followed the vehicle and stopped it shortly thereafter. MONTANEZ was detained by Detectives and read his Miranda rights.

7. Detectives then brought MONTANEZ back to his room at the Capri Motel. Detectives then attempted to enter the room utilizing two of the swipe key cards that MONTANEZ had on him. The swipe keys did not work and Detectives made a forced entry into Room #171 utilizing a battering ram after

identifying themselves as police to any potential occupants. Detectives then took MONTANEZ into the room and the search commenced.

8. New Bedford Detective Lieutenant Justin Kagan located 8 tabs of suspected Alprazolam along the North wall of the room. Additionally, Detective Lieutenant Kagan located 279 rounds of .22 caliber ammunition and 29 rounds of .40 caliber ammunition on the bottom shelf of a nightstand along the North wall of the room.

9. New Bedford Detective Sergeant Jonathan Lagoa located a green prescription bottle for Oxycodone with an obliterated name containing 9 tabs of suspected Oxycodone along the top shelf of a microwave stand towards the South wall of the room.

10. New Bedford Detective/ATF Task Force Officer (TFO) Lavar Gilbert located a Smith & Wesson, Bodyguard, .380 caliber pistol, s/n KFS5969, loaded with six .380 caliber rounds of ammunition in a magazine, a spare magazine loaded with six .380 caliber rounds of ammunition, a Springfield, XD-40, .40 caliber pistol, s/n US297576, loaded with 13 rounds of .40 caliber ammunition, a spare magazine loaded with eleven rounds of .40 caliber ammunition, and a H&R, model 922, .22 caliber revolver s/n P440960, all located under the mattress in the room.

11. New Bedford Detective Kevin Barbosa located two plastic bags of approximately 8.5 grams of suspected crack cocaine and one plastic bag of approximately 1 gram of suspected fentanyl on top of the microwave stand. Detective Barbosa also located 4 tabs of suspected Oxycodone on MONTANEZ's persons along with \$415 in US currency.

12. Additional evidence of drug trafficking was found within the apartment, including digital scales and plastic baggies..

13. Based on my training and experience, I know that the presence of narcotics, along with materials such as digital scales and plastic baggies is indicative of drug distribution, rather than simple drug use.

14. Subsequent to the execution of the search warrant, Detectives spoke with Witness 1, the proprietor of the Capri Motel. Witness 1 advised Detectives that MONTANEZ had been staying in Room #171 since July 03, 2020. Witness 1 further advised Detectives that the reason the swipe cards to the room did not

function was because MONTANEZ had not yet paid for the night but pays daily for the room in cash.

PRIOR FELONY CONVICTION

15. A review of certified court records revealed that MONTANEZ has previously been convicted of the following felony offense, punishable by a term exceeding one year:

- New Bedford District Court, Docket #1833CR004078. MONTANEZ pled guilty to Uttering a False Prescription and was sentenced on 6/21/19.

INTERSTATE NEXUS OF FIREARMS AND AMMUNITION

16. ATF Special Agent Patrick Briody, an Interstate Nexus Expert, has examined the Springfield XD-40 pistol, the Smith & Wesson Bodyguard pistol, the H&R Model 922 revolver, as well as the assorted .40 caliber ammunition, the assorted .380 caliber ammunition, and the assorted .22 caliber ammunition. It was determined the Springfield XD-40 pistol and the Smith & Wesson Bodyguard pistol were manufactured outside of the State of Massachusetts. The H&R Model 922 was determined to have been manufactured in the State of Massachusetts; however, a query of the National Tracing Center revealed the firearm was purchased in 2018 in the State of Maine. The aforementioned rounds of ammunition were also manufactured outside of the State of Massachusetts. Therefore, all firearms and ammunition have affected interstate commerce and necessarily crossed state lines prior to being recovered at the Capri Motel in Dartmouth, Massachusetts. Additionally, each of the listed firearms and ammunition meet the federal definition of a firearm and ammunition.

CONCLUSION

17. Based on the information described above, there is probable cause to believe that on July 14, 2020 MONTANEZ:

- a. Knowing that he had been previously convicted of a crime punishable by a term of imprisonment exceeding one year, did possess, in and affecting interstate commerce, a Smith and Wesson .380 Bodyguard, serial number KFS5969; a H&R Revolver, serial

number P440960; a Springfield XP-40 .40 caliber handgun, serial number US297576; and 315 rounds of ammunition, all in violation of Title 18, United States Code, Section 922 (g) (1).

Signed electronically and sworn to via telephone in accordance with Federal Rule of Criminal Procedure 4.1 on **October 16, 2020**

/s/ Eric Mercer
Special Agent Eric Mercer
Bureau of Alcohol, Tobacco, Firearms and Explosives

Electronically subscribed and telephonically sworn to before me this **October 16, 2020**

Marianne B. Bowler, USMJ
HON. MARIANNE B. BOWLER
United States Magistrate Judge

The seal of the United States District Court for the District of Columbia is visible in the background of the signature block. It is a circular seal with the text "UNITED STATES DISTRICT COURT" around the perimeter and "DISTRICT OF COLUMBIA" at the bottom. In the center is an eagle with spread wings.